DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 04-0262
Indiana Corporate Income Tax
For the Tax Years 1994-1998

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ISSUES

I. **Adjusted Gross Income Tax**—Exclusion of Taxpayer's Parent from Taxpayer's Consolidated Adjusted Gross Income Tax Return.

Authority: IC § 6-3-2-2; IC § 6-3-4-14; IC § 6-8.1-5-1; 45 IAC 3.1-1-38; *Hunt Corp. v. Indiana Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999).

Taxpayer protests the Department's decision to exclude Taxpayer's parent corporation from its Indiana consolidated adjusted gross income tax return.

II. **Statute of Limitations**—Net Operating Loss Carry Back.

Authority: IC § 6-8.1-5-1; *Phoenix Coal Co. v. Commissioner*, 231 F.2d 420 (2nd Cir. 1956).

Taxpayer protests the Department's assessment of additional tax for the 1997 tax year based on the redetermination of a 1999 net operating loss.

III. **Adjusted Gross Income Tax**—West Virginia Property Tax Add Back.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; 45 IAC 3.1-1-8.

Taxpayer protests the Department's decision to add back the West Virginia property taxes in calculating Indiana adjusted gross income.

IV. **Corporate Income Tax**—Liability Coverage Charges.

Authority: IC § 6-2.1-3-4 (repealed effective January 1, 2003); IC § 6-8.1-5-1; 45 IAC 1.1-2-5; 45 IAC 1.1-3-5; 45 IAC 3.1-1-55; 45 IAC 3.1-1-63.

Taxpayer protests the Department's determination to allocate to Indiana all of its service income received from liability coverage for damages to household goods.

V. **Corporate Income Tax**—Gain from Sale of Subsidiary's Assets.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the imposition of corporate income tax on proceeds from the sale of one of its subsidiary's assets.

VI. Adjusted Gross Income Tax—Business/Non-Business Income.

Authority: IC § 6-8.1-5-1; *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768 (1992).

Taxpayer protests the Department's decision to reclassify certain of Taxpayer's non-business income as business income.

VII. Adjusted Gross Income Tax—Michigan Single Business Tax Add Back.

Authority: IC § 6-8.1-5-1; 45 IAC 3.1-1-8.

Taxpayer protests the add back of the Michigan Single Business Tax in calculating Indiana adjusted gross income.

VIII. Adjusted Gross Income Tax—"Purchase Transportation Account."

Authority: IC § 6-8.1-5-1.

Taxpayer protests the Department's adjustments that were made based upon the Department's "Purchase Transportation Account Study."

STATEMENT OF FACTS

Taxpayer is a rail transportation service provider. Taxpayer is a multi-structured business consisting of a non-resident parent corporation with up to 12 subsidiaries in 1998 and as few as 10 subsidiaries in 1995 and 1997. Taxpayer filed a consolidated Indiana adjusted gross income tax return including all its subsidiaries for the tax years 1994 through 1997. For the 1998 tax year, Taxpayer included its parent in the consolidated Indiana adjusted gross income tax return for the first time. In 1998, Taxpayer's parent corporation purchased the stock of an unrelated corporation in order to acquire a lease of the operating assets of that corporation for its operating subsidiary. Later, through a complex series of transactions that included a spin-off of a corporation and merger of two subsidiaries, the parent corporation received ownership of these operating assets, all of which the parent transferred to its operating subsidiary except for an office building in Indiana that the parent rents to the operating subsidiary.

Pursuant to an audit for the tax period 1994-1998, the Indiana Department of Revenue (Department) assessed additional adjusted gross income tax, penalties, and interest. The Taxpayer protested the assessment. An administrative hearing was held, and this Letter of Findings results.

Both Taxpayer and the Department cite to the gross income tax regulations as recodified, even though the regulations were not in effect until January 1, 1999. However, since the language that affects Taxpayer has not substantially changed and has only been renumbered, this Letter of Findings will continue to reference the recodified code numbers.

I. **Adjusted Gross Income Tax**—Exclusion of Taxpayer's Parent from Taxpayer's Consolidated Adjusted Gross Income Tax Return.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer included its parent corporation ("parent") in its Indiana consolidated return for the first time in 1998. The Department found that Taxpayer's inclusion of its parent corporation in the consolidated return did not fairly reflect Taxpayer's income derived from sources within Indiana and removed the parent from the consolidated group. Taxpayer protests the Department's decision to exclude Taxpayer's parent corporation from its Indiana consolidated adjusted gross income tax return.

A. Derived from Sources Within Indiana: Nexus

Pursuant to IC § 6-3-4-14(a)-(b), "[A]n affiliated group of corporations shall have the privilege of making a consolidated return with respect to the taxes imposed by IC 6-3 . . . with the exception that the affiliated group shall not include any corporation which does not have adjusted gross income derived from sources within the state of Indiana."

IC § 6-3-2-2(a) defines "adjusted gross income derived from sources within Indiana" as follows:

(1) income from real or tangible personal property located in this state;
(2) income from doing business in this state;
(3) income from a trade or profession conducted in this state;
(4) compensation from a trade or profession conducted in this state; and
(5) income from stocks, bonds, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

Taxpayer maintains that the Department erred when it excluded its parent from the consolidated income tax return. During the course of protest, Taxpayer made assertions and submitted information providing additional arguments supporting the parent's nexus to Indiana. However, the Department is not arguing nexus. The audit concluded and the Department agrees that the parent had nexus with Indiana through its rental property activity, but the parent's activities warrant exclusion from the consolidated return because of the distortion that is created by including the parent. The audit determined that, in order to fairly reflect Taxpayer's Indiana

source income, separate accounting of the parent's activities within Indiana was required (as discussed in subpart B below).

Therefore, Taxpayer's assertions of the parent having ninety-nine (99) employees working in Indiana and having over $1,000,000 in dividend income, which is not reflected in the apportionment factors and is eliminated from taxable income through federal deductions, do not relate to the issue in dispute—i.e., the fair reflection of Indiana source income. Moreover, Taxpayer has not provided sufficient documentation establishing that the ninety-nine (99) employees were employed by the parent, that the parent compensated the ninety-nine (99) employees, or that the ninety-nine (99) employees' alleged Indiana activities were connected to the parent's $565,740,810 nationwide "loss." Additionally, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department is required to accept Taxpayer's assertions as to the nature of these transactions without providing the supporting documentation.

Presumably, Taxpayer is asserting that, in addition to its rental property activity, the parent is "doing business" within the state as defined in 45 IAC 3.1-1-38. However, even if Taxpayer was able to support these assertions, the Department would be justified in requiring separate accounting of the parent's Indiana activities because of the distortion that including the parent causes in order to more fairly reflect Taxpayer's Indiana source income (as discussed in subpart B below).

Therefore, Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest of the parent's nexus as it pertains to the rental property activity is sustained, but is denied as to all other issues of the parent's nexus.

B. Fairly Reflect Indiana Source Income

On Taxpayer's 1998 consolidated return, Taxpayer reported the parent as having a zero payroll factor, a zero sales factor, and a property factor of point one-nine of one percent ($26,880 Indiana divided by $14,235,415 everywhere = 0.19 percent). The Department found that the parent's Indiana activities, which consisted of renting office space to one of its subsidiaries resulting in $3,396 in Indiana rental income and $26,880 in capitalized rental expenses, when included in the consolidated return unfairly distorted Taxpayer's Indiana adjusted gross income. The Department determined that separately accounting for the parent's Indiana adjusted gross income would more fairly represent Taxpayer's Indiana source income. Accordingly, pursuant to IC §§ 6-3-2-2(l), (m) to permit a fair reflection of Taxpayer's Indiana source income, the Department excluded the parent from the consolidated group and separately accounted for the parent's Indiana source income.

IC § 6-3-2-2(l) provides:

> If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the *department may require*, in respect to all or any part of the taxpayer's business activity, if reasonable:
>
> (1) *separate accounting*;

> (2) the exclusion of any one (1) or more of the factors;
> (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
> (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. (*Emphasis added*).

In addition, IC § 6-3-2-2(m) provides:

> In the case of two (2) or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

IC §§ 6-3-2-2(l) and (m) provide the Department discretionary authority to adjust the allocation and apportionment provisions of the Taxpayer's adjusted gross income tax in order to arrive at an equitable and accurate allocation of Taxpayer's Indiana income. The purpose of the adjustments is to "fairly reflect . . . the income derived from sources within the state of Indiana . . . ." IC § 6-3-2-2(m).

Taxpayer maintains that since Taxpayer operates as a unitary business, the Department cannot order separate accounting. In support of this assertion, Taxpayer refers to various citations of text and footnotes in *Hunt Corp. v. Indiana Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999). While Taxpayer is correct in maintaining that the court in *Hunt* found that "a state may tax an apportioned sum of the corporation's multi-state income if that income derives form a unitary business," Taxpayer has missed a key point in the court's analysis. *Id*. at 769. The Department refers to *Hunt*, 709 N.E. 2d at 778 n.31, where the court provides as follows:

> [T]he Supreme Court has held that the Constitution does not require the state to engage in separate accounting in order to determine the amount of unitary business income that they may tax. See *Mobil Oil*, 445 U.S. at 438, 100 S. Ct. at 1232. Of course, nothing in the Constitution forbids a state from using separate accounting as a method of determining the sources of income, and the Indiana General Assembly has authorized its use where the allocation and apportionment provisions "do not fairly represent" a taxpayer's Indiana sourced adjusted gross income. See IND. Code § 6-3-2-2(l). (Emphasis added).

Therefore, the court in *Hunt* also found that separate accounting, while not required, may be used, and Indiana has determined that the Department may require separate accounting in order to "fairly represent" the taxpayer's Indiana adjusted gross income. *Id.*

Including the parent in Taxpayer's consolidated return would decrease the overall apportionment by one eleventh of one (0.11) percent. However, that comparatively minor decrease in the apportionment calculation would result in a one-hundred and twenty (120) percent decrease in Taxpayer's adjusted gross income. In effect, instead of reporting $45,000,000 in adjusted gross income, Taxpayer would report a "loss" of over $9,400,000. Therefore, including the parent in

the consolidated return would allow Taxpayer to import into the Indiana adjusted gross income calculation a disproportionate amount of the parent's nationwide federal "loss" to entirely offset the income Taxpayer earned in Indiana. The Department is unable to agree that the result would be a fair, equitable, or a realistic representation of Taxpayer's Indiana adjusted gross income. Accordingly, the separate reporting of the parent's Indiana adjusted gross income more fairly reflects Taxpayer's income derived from sources within Indiana.

Therefore, Taxpayer's protest is respectfully denied.

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In summary, Taxpayer's protest of subpart A is denied in part, and Taxpayer's protest of subpart B is denied.

II. Statute of Limitations—Net Operating Loss Carry Back.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer asserts that the Department's assessment of additional tax for the 1997 tax year based on the redetermination of a 1999 net operating loss, which Taxpayer carried back to 1997, was barred by the statute of limitations—i.e., the 1999 year was closed to assessments ("closed year"). Taxpayer reasons that since 1999 is a closed year, the Department cannot make an assessment based on the disallowance of the 1999 net operating loss even though the net operating loss had been carried back to 1997, which is an open year open—i.e., a year for which the statute of limitations has not expired.

While Indiana statutes and case law have not dealt with this particular situation, federal law governing net operating losses has dealt with this situation. In *Phoenix Coal Co. v. Commissioner*, 231 F.2d 420 (2nd Cir. 1956), the court held that the income for a closed year could be recomputed to determine the proper amount of net operating loss allowed to be carried to an open year. *Id*. at 421-422. The court reasoned that even though additional taxes could not be assessed for the closed year, the effect of the net operating loss from the closed year is on an open year and as such can be recomputated to determine the correct tax liability for the open year. *Id*.

Accordingly, the Department recomputed Taxpayer 1999 net operating loss because Taxpayer carried back to an open year, 1997. When the Department recomputed Taxpayer's tax liabilities for 1999, Taxpayer did not have a net operating loss. Therefore, the Department disallowed the net operating loss in 1997. Since the Department did not assess additional tax in the closed year and only disallowed the effect of that net operating loss in an open year, the Department acted properly within the statute of limitations.

FINDING

Taxpayer's protest is respectfully denied.

III. **Adjusted Gross Income Tax**—West Virginia Property Tax Add Back.

DISCUSSION

The Department determined that Taxpayer failed to add back certain property taxes that are not deductible in arriving at Indiana adjusted gross income pursuant to 45 IAC 3.1-1-8(3)(b) and assessed additional tax.

Taxpayer asserts that the Department erroneously added back property taxes that were assessed at the state level rather than at the local level of government. Taxpayer maintains that in West Virginia certain "public service corporations" do not pay local property taxes but are assessed similar taxes at the state level. Taxpayer reasons that since these taxes are assessed at the state level the taxes do not meet the criteria for add back under Indiana law.

During the course of the protest, Taxpayer was asked to submit documentation demonstrating the exact amount of property taxes that were assessed at the state level. Taxpayer submitted various documents. However, Taxpayer failed to provide any documentation demonstrating the amount of property taxes that were assessed at the state level. In addition, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department was required to accept Taxpayer's assertions as to the nature of these transactions without providing the supporting documentation.

In fact, IC § 6-8.1-5-4(a) provides:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer has failed to produce any documentation that demonstrates that the Department's assessment erred when the property tax add backs were included, Taxpayer has failed to meet its burden.

FINDING

Taxpayer's protest is respectfully denied.

IV. **Corporate Income Tax**—Liability Coverage Charges.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer protests the Department's determination to allocate all of its service income, which it receives for providing liability coverage for damages resulting to household goods, to Indiana for corporate income tax purposes.

A. Adjusted Gross Income Tax: Sales Apportionment Factor

The Department found that the receipts Taxpayer received for liability coverage were from services that are attributable to Indiana, because the revenues were earned from Taxpayer's corporate office located in Indiana. The employees in Taxpayer's "Insurance" and "Cash Reserves" departments, who performed the activities relating to these receipts, were located in Indiana.

45 IAC 3.1-1-55 provides:

> Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income-producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributed to this state if the greater proportion of the income producing activity is performed here, based on cost of performance.
> . . .
> Income producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered.
> . . .
> The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

Taxpayer maintains that the service income it receives for providing liability coverage is "revenue from transportation" services, which are apportioned on the basis of mileage as provided in 45 IAC 3.1-1-63.

45 IAC 3.1-1-63, under the subsection titled "Transportation Companies," provides, in relevant part, as follows:

> IC 6-3-2-2(b) requires that interstate carriers and all other multistate taxpayers use the three-factor formula in apportioning their business income. This method will assure consistency in the application of the Adjusted Gross Income Tax Act to multistate carriers. Business income for transportation companies is apportioned to Indiana by use of the following formula:

$$\frac{\text{Tangible property + payroll + revenue from transportation}}{3}$$

45 IAC 3.1-1-63(C), in relevant part, explains the revenue from transportation factor:

> The total revenue dollars from transportation (both intra-state and inter-state) are to be assigned to the state traversed on the basis of class or category mileage in each state in which the freight or passengers move. . . .In order to determine the percentage of revenue from transportation services in Indiana, the fraction of revenue miles in Indiana over revenue miles everywhere must be applied to total revenue from transportation.

Taxpayer asserts that these liability coverage service revenues are "transportation service" charges that represent tariffed levels of liability coverage authorized by the U.S. Department of Transportation. Taxpayer has provided sufficient documentation demonstrating that the liability coverage service charges are transportation charges that are subject to apportionment upon the basis of mileage.

Therefore, Taxpayer's protest is sustained.

B. Gross Income Tax: High Rate

The Department found that the receipts Taxpayer received for liability coverage were derived from services that are attributable to Indiana, because the revenues are earned from Taxpayer's corporate office located in Indiana. The employees in Taxpayer's "Insurance" and "Cash Reserves" departments, who performed the activities relating to these receipts, were located in Indiana.

Taxpayer maintains that the service income it receives for providing liability coverage is derived from "transportation charges," and should be taxed at the low rate based on revenue miles.

45 IAC 1.1-2-5(b) provided that "gross income derived from the provision of services of any character within Indiana is taxable at the high rate of tax."

IC § 6-2.1-3-4 (repealed effective January 1, 2003) provided:

> Gross receipts derived from transportation charges or other charges directly related to transporting:
>
> (1) property by truck or rail; or
> (2) passenger by bus or rail;
>
> are exempt from gross income tax if the transportation is an initial, intermediate, or final link in the interstate transportation of the property or the passengers.

In addition, 45 IAC 1.1-3-5(b) (repealed effective January 1, 2003) provided that the exemption for interstate transportation "does not apply to income derived from the transportation of

property or passengers between two (2) points in Indiana, even if property or passengers are later transported out of Indiana or earlier transported into Indiana."

In summary, receipts from transportation charges are exempt from gross income tax if the charges are for providing interstate transportation. However, to the extent that the charges result from intrastate transportation—i.e., transportation within Indiana—the receipts from the charges are subject to the high rate of gross income tax.

Taxpayer has provided sufficient documentation demonstrating that the liability coverage service charges are transportation charges. Therefore, Taxpayer is sustained to the extent that its documentation demonstrates that the liability coverage receipts were derived from interstate transportation, and denied to the extent that the documentation demonstrates that the liability coverage receipts were derived from transportation solely within Indiana, which are subject to the high rate of Indiana gross income tax.

FINDING

In summary, Taxpayer's protest of subpart A is sustained, and Taxpayer's protest of subpart B is sustained in part and denied in part.

V. Corporate Income Tax—Gain from Sale of Subsidiary's Assets.

DISCUSSION

The Department assessed corporate income tax for the 1994 tax year on the gain resulting from one of Taxpayer's subsidiaries ("old subsidiary") selling its assets to another one of Taxpayer's subsidiaries ("new subsidiary"). "New subsidiary" was formed in order to receive these assets. "Old subsidiary" sold all of its assets to "new subsidiary," and "old subsidiary" reincorporated into another subsidiary ("third subsidiary"). Then, Taxpayer sold "third subsidiary." The Department attributed the gain to "new subsidiary" because one of Taxpayer's preliminary returns had assigned the gains to "new subsidiary."

Taxpayer maintains that the Department erred when it based its assessment on this preliminary return. Taxpayer asserts that it did not file this return because it mistakenly attributed the gain of the sale of the assets to both the "new subsidiary" and the "old subsidiary." Taxpayer asserts that on the returns that were actually filed, the gains from the sale of assets were reported by "old subsidiary." Taxpayer reasons that since this gain has been reported by "old subsidiary," requiring Taxpayer to assign the gains to "new subsidiary" would result in Taxpayer being taxed twice for the same transaction.

During the course of protest, Taxpayer provided documentation to support its assertion that the gains from the sale of the assets were previously reported by Taxpayer. Taxpayer provided documentation that shows that the amounts on the preliminary return are different from the amount on the return actually filed. However, Taxpayer failed to provide documentation that showed the detail of the difference in the dollar amounts on the two returns or the detail of the dollar amounts reported on the previous year return. In effect, Taxpayer expects the Department

to rely on Taxpayer's assertion and imply that the difference in the returns results from the gain of the sale of assets and that the gain was reported in a previous year. Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department was required to accept Taxpayer's assertions as to the nature of these transactions without providing the supporting documentation.

In fact, IC § 6-8.1-5-4(a) provides:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer has failed to produce documentation that demonstrates that the Department's assessment erred when it included the gain from the sale of the assets, Taxpayer has failed to meet its burden.

FINDING

Taxpayer's protest is respectfully denied.

VI. Adjusted Gross Income Tax—Business/Non-Business Income.

DISCUSSION

Taxpayer states that the Department incorrectly determined that certain of Taxpayer's non-business income should have been classified as business income. The Department based its determination on the basis that one of Taxpayer's subsidiaries ("subsidiary one") had a subsidiary ("subsidiary one-A"), which was a corporate partner in a partnership that formed a unitary business. Taxpayer believes that this determination incorrectly increased the amount of adjusted gross income tax that was due. The burden of proving a proposed assessment wrong rests with the person against whom the assessment is made, as provided in IC § 6-8.1-5-1(b).

As a result of this protest, Taxpayer has provided analysis and documentation in support of its position that the subsidiary one was not in a unitary business. The Supreme Court explained the method to determine a unitary business in *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 781-782 (1992), as follows:

> Following the indicia of a unitary business defined in *Mobil Oil*, we inquired whether any of the three objective factors were present. The factors were: (1) functional integration; (2) centralization of management; and (3) economies of scale. 458 U.S. at 364. We found that "except for the type of occasional oversight -- with respect to capital structure, major debt, and dividends -- that any parent gives to an investment in a subsidiary," *id.*, at 369 none of these factors was present. The subsidiaries were found not to be part of a unitary business.

In the instant case, the interaction between the companies did not rise to the level of "centralized management." The documentation provided is sufficient to overcome the Department's position that there is a unitary business.

FINDING

Taxpayer's protest is sustained.

VII. Adjusted Gross Income Tax— Michigan Single Business Tax Add Back.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer asserts that the Department made an erroneous adjustment that increased the Taxpayer's 1995 Indiana adjusted gross income by $197,167. Taxpayer maintains that the adjustment was made to add back the $90,235 that Taxpayer paid for its Michigan Single Business Tax, which Taxpayer asserts is allowed as a deduction in arriving at adjusted gross income.

However, Taxpayer is mistaken. While the audit report does include an adjustment for a deduction that is not allowed in arriving at Indiana adjusted gross income in the amount $197,167 for the 1995 tax year, the adjustment (as shown on page 11of the audit report) is for an add back of Taxpayer's 1995 charitable contributions deduction. Pursuant to 45 IAC 3.1-1-8(2), charitable contributions are not allowed as a deduction in arriving at Indiana adjusted gross income. Since the adjustment was made to include Taxpayer's charitable contributions in its 1995 Indiana adjusted gross income, no error occurred.

FINDING

Taxpayer's protest is respectfully denied.

VIII. Adjusted Gross Income Tax—"Purchase Transportation Account."

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer protests the Department's adjustments that were made based upon the Department's "purchase transportation account study." Taxpayer maintains that since Taxpayer did not have access to the "Purchase Transportation Account Study," it would be unfair to allow the Department's adjustments that were based up that study.

However, Taxpayer is mistaken. Taxpayer has access to the "Purchase Transportation Account Study," which is located in the audit report for the 1997-1998 tax periods on page 45 and in the

audit report for the 1994-1996 tax periods on page 66. Therefore, since Taxpayer did have access to the study, unfairness has not resulted.

FINDING

Taxpayer's protest is respectfully denied.

AB/WL/DK-October 15, 2007